

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6394**

**BILL NUMBER:** SB 144

**NOTE PREPARED:** Apr 14, 2003

**BILL AMENDED:** Apr 10, 2003

**SUBJECT:** Sexual Misconduct with a Minor.

**FIRST AUTHOR:** Sen. Bowser

**FIRST SPONSOR:** Rep. L. Lawson

**BILL STATUS:** As Passed - House

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) The bill has the following provisions:

(A) It removes certain defenses related to sexual misconduct with a minor. It makes the offense of sexual misconduct with a minor that involves deadly force, a deadly weapon, or a drug or controlled substance a "crime of violence" for purposes of the law concerning consecutive and concurrent sentencing where the defendant is at least 18 years of age and the victim is 14 or 15 years of age.

(B) It provides a child is a child in need of services if the child lives in the same household with another child who is the victim of a sex crime. It creates a rebuttable presumption that a child is a child in need of services if: (1) the child lives in the same household with another child who is the victim of a sex crime; and (2) the person who committed the sex crime resides in a house with the child presumed to be a child in need of services.

(C) It provides a defense to a charge of trafficking with an inmate. It provides that certain penal facility employees are entitled to a review of an adverse employment determination based upon trafficking with an inmate.

**Effective Date:** (Amended) January 1, 2001 (Retroactive); July 1, 2003.

**Explanation of State Expenditures:** *Provision A* involves two sexual misconduct with a minor offenses which are punishable as a Class A felony and a Class B felony.

Two defenses available under current law to a charge of sexual misconduct with a minor include the accused reasonably believing that the child was at least 16 years of age, or the child being or having been married. Under the bill, the defenses would not apply when deadly force, a deadly weapon, or a drug or controlled substance is used. By eliminating the defense, more offenders would be committed to a state facility if one

of the defenses would have been used otherwise.

Also, under the bill, sexual misconduct that includes fondling or touching as the result of the use of deadly force, a deadly weapon, or a drug or controlled substance would be included in a list of offenses for which a judge may choose to sentence an offender to a consecutive sentence. If an offender serves a consecutive sentence rather than a concurrent sentence, the length of incarceration may increase, and costs to house the offender would increase.

A Class A felony is punishable by a prison term ranging from 20 to 50 years and a Class B felony is punishable by a term ranging from 6 to 20 years, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$25,087 in FY 2001. Individual facility expenditures ranged from \$18,520 to \$54,465. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class A felony offenders is approximately 9.1 years, and the average for all Class B felony offenders is approximately 3.7 years.

*Provision B:* This bill adds a new circumstance under which a child is a child in need of services (CHINS) if a child lives in the same household with another child who is a victim of a sex offense that can range from rape to child molestation to incest. The child in question would need care, treatment, or rehabilitation that the child is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court.

Depending on the number of children affected, this bill could increase the number of children who might be declared by a court to be a Child In Need of Services.

The estimated average annual cost per CHINS case was \$3,600 for CY 2001. This cost includes the population of children for whom investigations were completed as well as those who are CHINS. This overstates the costs for investigations and understates the costs for children in out-of-home placements. However, this is the most accurate number available from current data. For CY 2001 total child welfare expenditures were \$273 M for 76,000 children.

**Explanation of State Revenues:** *Provision A:* The maximum fine for both a Class A felony and a Class B felony is \$10,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

**Explanation of Local Expenditures:** *Provision A:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

*Provision B:* Depending on the actions of the juvenile court, the child could be placed in an out-of-home setting, increasing the costs to the county that pays for out-of-home costs. Depending on the financial status of the parents, guardians, or custodians of the child, the court may also incur added expenses for appointing an attorney to represent an indigent parent in a detention hearing.

**Explanation of Local Revenues:** *Provision A:* If additional court actions occur and a guilty verdict is

entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

**State Agencies Affected:** Department of Correction.

**Local Agencies Affected:** Trial courts; local law enforcement agencies; County Office of Family and Children.

**Information Sources:** Indiana Sheriffs Association, Department of Correction.

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